

HOUSE BILL NO. 495

INTRODUCED BY A. OLSON, COLE, DALE, KEANE, K. PETERSON, RIPLEY

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REVISING LAWS GOVERNING MINING; PROVIDING FOR A~~
~~SIMPLE~~ THE TRANSFER OF REVOKED COAL ~~OR METAL~~ MINE OPERATING PERMITS; REQUIRING
~~ADDITIONAL MINE BONDING FOR ENVIRONMENTAL MONITORING; PROVIDING FOR A COAL AND~~
~~URANIUM MINING AND RECLAMATION ACCOUNT; TRANSFERRING COAL AND URANIUM MINING~~
~~FORFEITURE COSTS AND PENALTIES FROM THE GENERAL FUND TO THE COAL AND URANIUM MINING~~
~~AND RECLAMATION ACCOUNT; DEPOSITING OIL AND GAS CIVIL PENALTIES IN THE OIL AND GAS~~
~~PRODUCTION DAMAGE MITIGATION ACCOUNT; AMENDING SECTIONS 82-4-113, 82-4-241,~~
~~82-11-149, AND 82-11-161, MCA; AND~~ PROVIDING AN IMMEDIATE EFFECTIVE DATE, ~~AND A~~
RETROACTIVE APPLICABILITY ~~DATE~~ DATES, AND A TERMINATION DATE."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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~~NEW SECTION. Section 1. Operating permit revocation -- permit transfer.~~ (1) The revocation of
a mine operating permit by the department under this part applies only to the person holding the permit
and does not dissolve or extinguish the operating permit. An operating permit that is revoked or has been
revoked within 5 years prior to [the effective date of this act] becomes the property of the state of
Montana and is subject to transfer to a new operator pursuant to this section.

~~(2) The department shall ensure that the site reclamation and environmental monitoring~~
~~requirements of the revoked operating permit are implemented to standards no less than those specified~~
~~in the revoked operating permit and reclamation plan.~~

~~(3) At any time prior to the completion of reclamation or within 5 years following the date that~~
~~an operating permit was revoked, whichever occurs first, the department shall:~~

~~(a) transfer the operating permit to a new operator if the new operator:~~

~~(i) makes application to the department and provides proof of site ownership or control;~~

~~(ii) provides adequate bonding as required by this part; and~~

~~(iii) is not otherwise prohibited from obtaining an operating permit pursuant to this part;~~

~~(b) require as a condition of permit transfer that, prior to beginning mine production activities, all~~

~~preexisting permit deficiencies must be corrected to the satisfaction of the department and that any preestablished environmental monitoring requirements are updated and continue; and~~

~~—— (c) retain all remaining forfeited bond money associated with the revoked operating permit for transfer into the damage mitigation account provided under this part.~~

~~—— (4) The department may not require for a revoked operating permit subject to transfer to a new operator under subsection (3) a complete new permit application, supporting data, or a review under 75-1-201 unless the department can show that significant changes in the operating plan, reclamation plan, or environmental baseline data have occurred since the revocation of the initial operating permit.~~

~~—— NEW SECTION. Section 2. Postoperation monitoring bond. The department may require a person to provide an additional bonding component to the bonding that is otherwise required by this part to fund any environmental monitoring activities that may be required during the time period, not to exceed 5 years, between permit revocation, suspension, mine abandonment, or project completion and the complete implementation of the reclamation plan.~~

~~—— NEW SECTION. Section 3. Coal and uranium mining and reclamation account. There is a coal and uranium mining and reclamation account in the state special revenue fund provided for in 17-2-102. All fees, fines, penalties, bond receipts, and other uncleared money that is paid to the department under the provisions of part 1 and this part must be deposited in the account. The account is available to the department by appropriation and may be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by coal or uranium mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year does not revert to the general fund but must be carried forward in the account for the purposes of this section until expended or until appropriated by subsequent legislative action.~~

~~—— Section 4. Section 82-4-113, MCA, is amended to read:~~

~~—— "82-4-113. Receipts paid into general fund coal and uranium mining and reclamation account. Except for bond Bond forfeiture moneys money, all fees, penalties, and other moneys money available or paid to the department under the provisions of this part shall must be placed in the state treasury and credited to the general fund coal and uranium mining and reclamation account provided for in [section 3]."~~

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2 ~~Section 5. Section 82-4-241, MCA, is amended to read:~~

3 ~~"82-4-241. Receipts paid into general fund coal and uranium mining and reclamation account.~~

4 Except for bond ~~Bond~~ forfeiture moneys money, all fees, penalties, and other moneys money available or
5 paid to the department under the provisions of this part shall must be placed in the state treasury and
6 credited to the general fund coal and uranium mining and reclamation account provided for in [section 3]."

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8 ~~Section 6. Section 82-11-149, MCA, is amended to read:~~

9 ~~"82-11-149. Civil penalties. (1) A person is guilty of a misdemeanor and is subject to a civil~~
10 ~~penalty of at least \$75 and not more than \$10,000 a day for each violation if that person violates any rule~~
11 ~~or order of the board or a provision of this chapter. Each day of violation constitutes a separate violation.~~

12 ~~(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued~~
13 ~~under it by injunction or other appropriate remedy.~~

14 ~~(3) The board, or the attorney general upon request of the board, shall institute and maintain any~~
15 ~~enforcement proceedings in the name of the state.~~

16 ~~(4) Civil penalties collected pursuant to this section must be deposited in the state general fund~~
17 ~~oil and gas production damage mitigation account provided for in 82-11-161."~~

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19 ~~Section 7. Section 82-11-161, MCA, is amended to read:~~

20 ~~"82-11-161. Oil and gas production damage mitigation account -- statutory appropriation. (1)~~

21 ~~There is an oil and gas production damage mitigation account within the state special revenue fund~~
22 ~~established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.~~

23 ~~(2) At the beginning of each biennium, there must be allocated to the oil and gas production~~
24 ~~damage mitigation account \$50,000 from the interest income of the resource indemnity trust fund, except~~
25 ~~that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage~~
26 ~~mitigation account:~~

27 ~~(a) equals or exceeds \$200,000, no allocation will be made; or~~

28 ~~(b) is less than \$200,000, then an amount less than or equal to the difference between the~~
29 ~~unobligated cash balance and \$200,000, but not more than \$50,000, must be allocated to the oil and gas~~
30 ~~production damage mitigation account from the interest income of the resource indemnity trust fund.~~

~~———— (3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to 82-11-136 and 82-11-149.~~

~~———— (4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.~~

~~———— (5) Interest from funds in the oil and gas production damage mitigation account accrues to that account."~~

NEW SECTION. SECTION 1. OPERATING PERMIT REVOCATION -- PERMIT TRANSFER. ~~(1) THE REVOCATION OF A MINE OPERATING PERMIT BY THE DEPARTMENT UNDER THIS PART APPLIES ONLY TO THE PERSON HOLDING THE PERMIT AND DOES NOT DISSOLVE OR EXTINGUISH THE OPERATING PERMIT. AN OPERATING PERMIT THAT IS REVOKED IN ACCORDANCE WITH THIS PART DOES NOT TERMINATE UNTIL 5 YEARS AFTER REVOCATION OR UNTIL SUBSTANTIAL COMPLETION OF SEEDING AND PLANTING ON DISTURBED AREAS, WHICHEVER OCCURS EARLIER. AFTER REVOCATION AND BEFORE TERMINATION OF A PERMIT, THE DEPARTMENT SHALL ENSURE THAT THE SITE RECLAMATION AND ENVIRONMENTAL MONITORING REQUIREMENTS OF A REVOKED OPERATING PERMIT ARE IMPLEMENTED TO STANDARDS NO LESS THAN THOSE SPECIFIED IN THE REVOKED OPERATING PERMIT AND RECLAMATION PLAN.~~

~~(2) A PERSON MAY APPLY FOR THE TRANSFER OF A REVOKED PERMIT THAT HAS NOT TERMINATED BY SUBMITTING AN APPLICATION TO THE DEPARTMENT THAT CONTAINS THE INFORMATION REQUIRED FOR A PERMIT APPLICANT IN 82-4-222(1)(B) THROUGH (1)(I). UPON RECEIPT OF AN APPLICATION FROM A PERSON WHO IS NOT PRECLUDED FROM HOLDING A PERMIT PURSUANT TO THIS PART, THE DEPARTMENT SHALL CEASE RECLAMATION ACTIVITIES ON THE PERMIT~~

1 AREA.

2 (3) THE DEPARTMENT MAY NOT REQUIRE THE APPLICANT TO SUBMIT ANY ADDITIONAL INFORMATION UNLESS THE
3 DEPARTMENT CAN SHOW THAT SIGNIFICANT CHANGES IN THE ENVIRONMENTAL BASELINE DATA HAVE OCCURRED DURING
4 THE PERIOD OF OPERATION OR SINCE THE REVOCATION OF THE INITIAL OPERATING PERMIT.

5 (4) THE DEPARTMENT MAY NOT PREPARE A REVIEW UNDER 75-1-201 FOR A TRANSFER UNLESS THE DEPARTMENT
6 DETERMINES CAN SHOW THAT THE OPERATION HAS CAUSED OR MAY CAUSE SIGNIFICANT IMPACTS THAT HAVE NOT BEEN
7 ANALYZED PREVIOUSLY IN AN ENVIRONMENTAL REVIEW DOCUMENT PREPARED PURSUANT TO 75-1-201.

8 (5) THE DEPARTMENT SHALL PROCESS AN APPLICATION FOR TRANSFER UNDER THE SAME TIMEFRAMES AS ARE
9 PROVIDED IN 82-4-231 FOR PROCESSING OF PERMIT APPLICATIONS.

10 (6) EXCEPT AS PROVIDED IN SUBSECTION (7), THE DEPARTMENT SHALL, AFTER RECEIPT OF AN APPLICATION
11 PURSUANT TO SUBSECTIONS (2) THROUGH (5) AND AFTER PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT:

12 (A) TRANSFER THE OPERATING PERMIT TO A NEW OPERATOR IF THE NEW OPERATOR PROVIDES PROOF OF SITE
13 OWNERSHIP OR CONTROL AND ADEQUATE BONDING AS REQUIRED BY THIS PART; AND

14 (B) REQUIRE AS A CONDITION OF PERMIT TRANSFER THAT, PRIOR TO CREATING ADDITIONAL DISTURBANCE AT THE
15 SITE, ALL PREEXISTING PERMIT DEFICIENCIES, INCLUDING MODIFICATIONS NECESSARY BECAUSE OF RECLAMATION THAT
16 HAS BEEN CONDUCTED AT THE SITE, BE CORRECTED TO THE SATISFACTION OF THE DEPARTMENT AND THAT ANY
17 PREESTABLISHED ENVIRONMENTAL MONITORING REQUIREMENTS CONTINUE.

18 (7) THE DEPARTMENT MAY NOT TRANSFER ANY PERMIT FOR WHICH IT ~~HAS DETERMINED~~ CAN SHOW THAT:

19 (A) THE REQUIREMENTS OF THIS PART AND THE RULES ADOPTED UNDER THIS PART FOR OPERATION, BACKFILLING,
20 GRADING, SUBSIDENCE STABILIZATION, WATER CONTROL, HIGHWALL REDUCTION, TOPSOILING, REVEGETATION, AND
21 RECLAMATION OF THE AFFECTED AREA CANNOT BE MET;

22 (B) SIGNIFICANT CHANGES IN THE OPERATING PLAN OR RECLAMATION PLAN ARE NECESSARY; OR

23 ~~—— (C) ENVIRONMENTAL DATA HAS NOT BEEN COLLECTED AND RECORDED IN SUBSTANTIAL COMPLIANCE WITH THE~~
24 ~~ENVIRONMENTAL MONITORING REQUIREMENTS OF THIS PART, RULES ADOPTED UNDER THIS PART, OR THE PERMIT; OR~~

25 ~~(D)(C) THE DEPARTMENT WOULD BE PRECLUDED FROM ISSUING A PERMIT TO THE APPLICANT BY 82-4-227(11)~~
26 ~~OR (12).~~

27 (8) THE DEPARTMENT IS NOT REQUIRED TO REIMBURSE THE FORMER PERMITTEE OR SURETY FOR FUNDS EXPENDED
28 FOR RECLAMATION, MONITORING, OR SITE MAINTENANCE PRIOR TO PERMIT TRANSFER.

29 (9) THIS SECTION DOES NOT APPLY TO THE REVOCATION OR TRANSFER OF AN OPERATING PERMIT THAT
30 AUTHORIZES MINE OPERATIONS ON FEDERAL LANDS.

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2 NEW SECTION. Section 2. Codification instruction. ~~(1) [Sections 1 and 2] are intended to be~~
3 ~~codified as an integral part of Title 82, chapter 4, parts 1, 2, and 3, and the provisions of Title 82, chapter~~
4 ~~4, parts 1, 2, and 3, apply to [sections 1 and 2].~~

5 ~~(2)~~ [Section 3 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and
6 the provisions of Title 82, chapter 4, part 2, apply to [section 3 1].

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8 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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10 NEW SECTION. Section 4. Applicability. [Section 1] applies to mine operating permits that are
11 in effect as of [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to
12 permits that were revoked no more than 5 years before [the effective date of this act].

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14 NEW SECTION. SECTION 5. TERMINATION -- CONTINGENT TERMINATION. (1) EXCEPT AS PROVIDED IN
15 SUBSECTION (2), [THIS ACT] TERMINATES OCTOBER 1, 2005.

16 (2) IF THE OFFICE OF SURFACE MINING OF THE UNITED STATES DEPARTMENT OF THE INTERIOR DISAPPROVES THE
17 CHANGES TO MONTANA'S PROGRAM THAT ARE PROVIDED IN [THIS ACT], THEN [THIS ACT] TERMINATES 60 DAYS AFTER
18 THE DEPARTMENT OF ENVIRONMENTAL QUALITY RECEIVES NOTIFICATION OF THAT DISAPPROVAL. THE DEPARTMENT OF
19 ENVIRONMENTAL QUALITY SHALL PROVIDE A COPY OF THE DOCUMENT THAT DISAPPROVES THE CHANGES TO MONTANA'S
20 PROGRAM TO THE MONTANA CODE COMMISSIONER.

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- END -